

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.*, ("Act") assigns the responsibility for administration of the Act to the Commissioner of Commerce and Insurance ("Commissioner"). The Petitioner, the Tennessee Securities Division ("Division"), is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee.

2. The Act assigns the responsibility for its administration to the Commissioner. The Division, is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee.

3. Dynetech Corporation ("DC") is a business entity whose principal place of business is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. DC has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser. DC is a Florida-chartered corporation. Laurence J. Pino is the registered agent for service of process for DC. DC is the parent corporation of American Cash Flow Corporation.

4. American Cash Flow Corporation ("ACFC") is a business entity whose principal place of business is located at 255 S. Orange Ave, Sixth Floor, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. ACFC has never been registered with the Division as a broker-dealer, investment adviser or agent of a broker-dealer or investment adviser. ACFC is a Florida-chartered corporation. Laurence J. Pino is the registered agent for

service of process for ACFC.

5. American Cash Flow Institute, Inc. ("ACFI") is a business entity whose principal place of business is located at 255 S. Orange Ave, Sixth Floor, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. ACFI has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser. ACFI is a Florida-chartered corporation. Laurence J. Pino is the registered agent for service of process for ACFI.

6. American Cash Flow Association, Inc. ("ACFA") is a business entity whose principal place of business is located at 255 S. Orange Ave, Sixth Floor, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. ACFA has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser. ACFA is a Florida-chartered corporation. Frederick Rewrey is the registered agent for service of process for ACFA.

7. Liquidyne, Inc. ("LD") is a business entity whose principal place of business is located at 255 S. Orange Ave, Sixth Floor, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. LD has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser. DC is a Florida-chartered corporation. Laurence J. Pino is the registered agent for service of process for DC.

8. Cash Flow America, Inc. ("CFA") is a business entity whose principal place of business is located at 255 S. Orange Ave, Sixth Floor, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL 32802. CFA has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser. CFA is a Florida-chartered corporation. Laurence J. Pino is the registered agent for service of process for CFA.

9. Diversified Cash Flow Institute, Inc ("DCFI") is a business entity whose is located at 255 S. Orange Ave, Sixth Floor, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL 32802. DCFI has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser. DCFI was a Florida-chartered corporation. Laurence J. Pino was the president, general counsel and registered agent for service of process for DCFI.

10. Pro Plus Financial Services, Inc. ("PPFS") is a business entity whose principal place of business is located at 1045 Kirk Avenue, Columbus OH. PPFS has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser.

11. Paragon Financial Group ("PFS") is a business entity whose principal place of business is located at 2140 Pine Meade, Knoxville, TN. 37293. PFS has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser.

12. American Cash Flow Solutions ("ACFS") is a business entity whose principal place of business is located at 2140 Pine Meade, Knoxville, TN. 37293. ACFS has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser.

13. Colonial Funding Group ("CFG") is a business entity whose principal place of business is located at 2140 Pine Meade, Knoxville, TN. 37293. CFG has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser.

14. Covenant Funding Group ("COVFG") is a business entity whose principal place of business is located at 113 Eastlawn Drive, Goodlettsville, TN. 37072. COVFG has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser.

15. Alpha Financial Funding ("AFF") is a business entity whose principal place of business is unknown to the Division at this time. AFF has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser.

16. Laurence J. Pino ("Pino") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. Pino has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Pino is the chairman and chief executive officer of DC.

17. Janet Horvath-Pino ("J. Pino") is an individual whose business address is located at

255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. J. Pino has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. J. Pino is the executive vice-president and chief operating officer of DC.

18. Patricia T. Wilson ("Wilson") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. Wilson has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof.

19. Wanda Quinn ("Quinn") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. Quinn has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Quinn is the controller of DC.

20. Frederic Rewrey ("Rewrey") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. Rewrey has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof.

21. James T. Wassell ("Wassell") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. Wassell has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Wassell is a member of the board of directors for DC.

22. David L. Strobel ("Strobel") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box

1511, Orlando, FL. 32802. Strobel has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Strobel is a member of the board of directors for DC.

23. Vincent Addonisio ("Addonisio") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. Addonisio has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Addonisio is a member of the board of directors for DC.

24. William Wimble ("Wimble") is an individual whose business address is located at 255 S. Orange Ave, Suite 600, Orlando, FL. 32801 and whose mailing address is located at P.O. Box 1511, Orlando, FL. 32802. Wimble has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Wimble is a member of the board of directors for DC.

25. Dan Eckelman ("Eckelman") is an individual whose address is located at 1045 Kirk Avenue, Columbus, OH. Eckelman has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Eckelman is the president of PPFS.

26. Richard Young ("Young") is an individual whose address is located at 2140 Pine Meade, Knoxville, TN 37923. Young has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. Young is the director of ACFS.

27. Janice Young ("J. Young") is an individual whose address is located at 2140 Pine Meade, Knoxville, TN 37923. J. Young has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof. J. Young is the operations manager of ACFS.

28. On or about June 9-11, 2003 ACFC conducted seminars in Nashville soliciting clients to invest four thousand nine hundred ninety-five dollars (\$4,995.00) to purchase a training seminar in which investors would be taught how to make money by engaging in cash flow transactions,

factoring, private mortgages, real estate and business funding. Advertisements for the ACFC seminars were advertised on June 7-8, 2003, on WTVF, a local television station.

29. On or about June 10, 2003, an investigator of the Division attended one of the seminars described in ¶ 33 above. The seminar was held in at the Doubletree Hotel in downtown Nashville.

30. Eckelman conducted the seminar described in ¶ 34 above. Approximately sixty (60) people attended the seminar described in ¶ 34 above, including the investigator of the Division.

31. Eckelman described business opportunity involving "cash flow" as the buying and brokering of privately held income streams. Eckelman represented to seminar attendees that there were sixty (60) different income streams one can get into.

32. Eckelman stated at the seminar described in ¶ 34 above that there was no risk for the "broker," or the seminar attendee who decided to sign up for the business opportunity described in ¶ 33-35 above.

33. Eckelman stated that some of the brokers of ACFC had made ten of thousands of dollars by operating as a "broker" for ACFC.

34. Eckelman stated to the seminar attendees that ACFC was involved in "factoring" or the purchase of accounts receivables from businesses through its "brokers." Eckelman stated to the seminar attendees that no special business knowledge or experience was necessary to become a "broker" with ACFC. Eckelman stated to seminar participants that they could pay the fee to attend the seminars through financing provided by ACFC. Eckelman also stated that the seminar fee was fully refundable and tax deductible.

35. Eckelman stated to seminar attendees that the paid seminar classes would be held on

June 20-22, 2003 at the Millennium Hotel in Nashville, TN.

36. On or about November 18, 1996, Pino, on behalf of DCFI, entered into an Agreed Order and Assurance of Voluntary Compliance ("Agreed Order"), wherein DCFI, without admitting or denying the allegations contained therein, agreed to pay ten thousand two hundred eighty-four dollars (\$10,284.00) to the State of Tennessee for attorneys and fees and costs and for violations of the Tennessee Consumer Protection Act ("Act"), as amended, at Tenn. Code Ann. §§ 47-18-101 *et seq* (Copies of the Agreed Order and Assurance of Voluntary Compliance are attached hereto and referenced herein as Exhibit A).

37. The Agreed Order provides that DCFI held seminars in Tennessee promoting a "cash flow industry" training program while failing to disclose the necessity of complying with applicable state and federal laws and rules and regulations promulgated thereunder. Exhibit A. The Agreed Order stated that DCFI overstated the value of the training offered in the seminars and failed to disclose the knowledge and expertise necessary for working in the business. *Id.*

38. The Agreed Order also provided that DCFI would agreed not to violate any provisions of the Act in the future. *Id.*

CONCLUSIONS OF LAW

39. Tenn. Code Ann. § 48-2-104 provides that:

(a) It is unlawful for any person to sell any security in this state unless:

- (1) It is registered under this part;
- (2) The security or transaction is exempted under § 48-2-103; or
- (3) The security is a covered security.

(b) The [C]ommissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

40. Tenn. Code Ann. § 48-2-102(16) provides that:

“Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. . . .(emphasis added)

41. Tenn. Code Ann. § 48-2-102(16) provides that:

“Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. . . .(emphasis added)

42. In *King v. Pope*, 91 S.W.3d 314, 321 (Tenn. 2002), the Tennessee Supreme Court held that an investment contract must satisfy the following four elements:

(1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

43. The facts presented by the Division in this matter demonstrate that: (1) the contracts sold by the Respondents meet the definition of investment contracts as defined in *King*, 91 S.W.3d at 321, and are therefore securities under the Act, pursuant to Tenn. Code Ann. § 48-2-102(16); (2) that the Respondents have sold securities in Tennessee without first having registered such securities with the Division, as required by the Act; (3) that such securities are not subject to any exemptions under the Act; and (4) that such securities are not "covered" securities, as defined under the Act.

44. Tennessee Code Annotated § 48-2-102(3) defines a "broker-dealer" as any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities.

45. Tennessee Code Annotated § 48-2-102(2) defines an "agent" as any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in or into this state.

46. Tennessee Code Annotated § 48-2-109(a) provides, in pertinent part, that:

(a) It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

...

(e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a fine against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

47. Tennessee Code Annotated § 48-2-121(a) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

48. Based upon the Findings of Fact, the Respondents have violated and/or are violating Tenn. Code Ann. § 48-2-104(a) by selling unregistered securities in Tennessee which are not subject to an exemption and which are not covered securities, as defined in the Act.

49. Based upon the Findings of Fact, the Respondents have violated and/or are violating Tenn. Code Ann. § 48-2-109(a) by acting as an unregistered broker-dealer and/or investment adviser and/or agent thereof in Tennessee.

50. Based upon the Findings of Fact, the Respondents have violated and/or are violating Tenn. Code Ann. § 48-2-121(a) by making material misrepresentations and omissions of facts in connection with the offer and sale of securities in Tennessee.

51. Based upon the Findings of Fact, the Commissioner concludes that the Respondents have violated and/or are continuing to violate the Act, specifically at Tenn. Code Ann. §§ 48-2-104, 109, and 121, as set forth above.

52. Tenn. Code Ann. § 48-2-116 provides that the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Act, and that such Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

53. Tenn. Code Ann. § 48-2-116(e)(2) provides that no Order may be entered without (1) prior notice to affected parties unless the Commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors, (2) an opportunity for a hearing before the Commissioner, and (3) written Findings of Fact and Conclusions of Law.

54. Based upon the Findings of Fact and Conclusions of Law described herein, it would not be in the public interest and would be detrimental to the protection of investors if prior notice of this Order were given to the affected parties.

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. The Respondents shall comply with all provisions of the Act.
2. The Respondents shall cease and desist in further conduct as a broker-dealer, investment adviser or agent thereof from, in, or into the State of Tennessee until such time as they are effectively registered with the Division to engage in such activity.
3. The Respondents shall cease and desist in further offerings and sales of securities from, in or into the State of Tennessee until such time as they have complied with all registration requirements under the Act and the rules and regulations promulgated thereunder.

4. The Respondents shall cease and desist further use of any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in the offer and/or sale of a security from, in or into this State.

5. All persons in any way assisting, aiding, or helping any of the aforementioned Respondents in any of the aforementioned violations of the Act shall cease and desist from all such activities in violation of the Act.

This Order is not intended to prohibit any lawful conduct in which the Respondents might be engaged.

Entry of this Order shall not in any way restrict the Tennessee Securities Division or the Commissioner of Commerce and Insurance from taking further action with respect to these or other possible violations by the Respondents of the Act or any of the Rules promulgated thereunder.

*This Order shall become a **Final Order** thirty (30) days from the date of its entry, unless written notification requesting a hearing is made by the parties within the thirty (30) day period.*

You are advised that you have the right to a hearing as to all matters raised in this Order. If you wish to exercise your right to a hearing, please notify:

**DAPHNE D. SMITH
ASSISTANT COMMISSIONER FOR SECURITIES
STATE OF TENNESSEE, DEPARTMENT OF COMMERCE AND INSURANCE
DAVY CROCKETT TOWER, SUITE 680
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243**

Such request must be received within thirty (30) days of the date of entry of this Order.

ENTERED this the 20th day of June, 2003.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

KCBAL

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